

Court of Appeals, State of Michigan

ORDER

Mark Sedgeman v Phyllis G Mento

Docket No. 266225

LC No. 2004-005106-NI

Mark J. Cavanagh
Presiding Judge

Henry William Saad

Pat M. Donofrio
Judges

The Court orders, pursuant to MCR 7.205(D)(2), that the October 12, 2005, order of the Macomb Circuit Court hereby is VACATED to the extent that it contains a finding that plaintiff suffered a serious impairment of body function as a matter of law. The record facts reflect that the parties dispute the extent to which plaintiff's physician has restricted plaintiff's activities and dispute the affect of plaintiff's injuries on his ability to lead his normal life. Findings of fact may not be made by a court deciding a summary disposition motion. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994). Given the dispute, the trial court erred in finding that plaintiff had suffered a serious impairment of body function as a matter of law. In all other respects, the application for leave to appeal is DENIED.

The motion for stay is DENIED.

This order is to have immediate effect, MCR 7.215(F)(2).



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAY 26 2006
Date

Sandra Schultz Mengel
Chief Clerk